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October 2, 2018

The Honorable Joan N. Ericksen  
District Judge, District of Minnesota  
United States District Court  
12W U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

The Honorable David T. Schultz  
Magistrate Judge, District of Minnesota  
United States District Court  
9E U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

RE: *In re Bair Hugger Forced Air Warming Devices Products Liability Litigation*, MDL 2666

Dear Judge Ericksen and Judge Schultz:

It now seems clear that *Axline* will not be tried on December 3. Last Thursday, Plaintiffs agreed to dismiss the remaining claims in the case, preserving only their right to appeal Judge Schultz's September 26 order denying leave to amend. Even if that appeal is ultimately successful, it is highly unlikely to be resolved in time to preserve the current pretrial deadlines and trial date.

To carry forward the intentions of the parties and the Court as set forth in the Bellwethers Second scheduling orders, the parties should now shift to working up the next set of Bellwethers Second cases for trial. Given that only one of the Bellwethers First cases made it to trial, and the first two Bellwethers Second cases have fallen out, Defendants suggest that the parties work up four of the remaining Bellwethers Second cases to increase the likelihood that one of them is ready for trial by mid-May 2019.

To that end, we propose the attached schedule. The proposed schedule allows the parties until next Monday to select which four of the remaining cases to finish working up. While the current scheduling order gave a deadline for setting the order of cases, it would behoove both sides to reassess the priority of cases in light of what they have learned from *Gareis*, *Hives*, and *Axline*.

Respectfully submitted,

/s/ Jerry W. Blackwell

Attachment